

**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WAGGONER CARR
ATTORNEY GENERAL**

November 6, 1963

Honorable John H. Winters
Commissioner
State Department of Public
Welfare
Austin, Texas

Opinion No. C-172

Re: Whether the State Department of Public Welfare is authorized to continue their agreements with the Federal Government as regards the Merit System.

Dear Mr. Winters:

Your opinion request states that the State Department of Public Welfare, hereinafter referred to as the Department, receives substantial grants-in-aid necessary to its operation from the Federal Government. As a condition of qualifying for such grants, agreements are made with the Federal Government which include the requirement that the Merit System of Personnel Administration be followed by the Department. You state that:

"Over a period of years the State Department of Public Welfare has officially operated under a Merit System of Personnel Administration as required by Titles I, IV, Section 3 of V, X, and XIV of the Federal Social Security Act, and as authorized by Section 4, Subsection (10) of the Public Welfare Act of 1941, as amended, being House Bill No. 611, Acts of the 47th Legislature, Regular Session, 1941, and being codified as Article 695c, Vernon's Civil Statutes."

Your request states that under the above Merit System salary increases are based on written satisfactory evaluation of work performed and are not automatic, and therefore in principle are similar to the Merit Salary Increases provisions in Article V, Section 1, Subsection L of House Bill 86, Acts of the 58th Legislature, 1963. However, the provisions of these two plans are not identical, particularly as to the length of time required between merit increases, the initial date that such merit can be recognized, and the number of employees eligible for such recognition.

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Article V, Section 1 of House Bill 86 states that, except where otherwise specifically provided, expenditures for employees' salaries in classified positions shall be governed by and be in conformity with the provisions of such Section. However, within the provisions of House Bill 86 relating to the Department, the following appears at page III-186:

"Salary adjustments and merit system increases shall be governed by agreements with the Federal Government provided, however, that such agreements do not exceed the provisions in this Act governing the operation of the State Employees Classification Plan."

You therefore ask our opinion concerning the following question:

"Do the Statutes and the Appropriation Act permit a Salary Classification Plan under the Merit System Rule with a beginning step for each position not above Step 1 of the State Salary Classification Schedule and for intermediate steps to which employees may be advanced at stated intervals as may be agreed by the State Department of Public Welfare and the Federal Agency so long as the maximum salary paid does not exceed the maximum for the group to which the employee is assigned as provided in the State Classification Salary Schedule under the State Salary Classification Plan?"

The use of the Merit System by the Department was first authorized in 1941 when the Legislature enacted Article 695c which provides at Section 4 (10) that the Department shall:

"(10) Have authority to establish by rule and regulation a Merit System for persons employed by the State Department of Public Welfare in the administration of this Act; and shall provide by rule and regulation for the proper operation and maintenance of such Merit System on the basis of efficiency and fitness; and may provide for the continuance in effect of any and all actions heretofore taken in pursuance of the purposes of this subsection. The State Department is empowered and authorized to adopt regulations that may be necessary

to conform to the Federal Social Security Act approved March 14, 1935, as amended, and shall have the power and authority to provide for the maintenance of a Merit System in conjunction with any Merit System applicable to any other State agency or agencies operating under the said Social Security Act as amended.

"The Social Security Board shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods."

After some twenty years of operation by the Department under the Merit System Rule, the Legislature again acknowledged such in the "Position Classification Act of 1961," codified as Article 6252-11, Vernon's Civil Statutes, which recites in Section 5 that:

". . .

"The preceding two paragraphs of this Section, however, shall not be construed as abrogating statutory authorizations for certain State agencies to operate under employee merit systems as a condition for qualifying for Federal grants-in-aid; and all such merit systems as have been or may hereafter be agreed to by the respective State agencies and agencies of the U.S. Government shall be in full force and effect, subject only to the applicable laws of this State."

In addition, it is also observed that while the Department is covered by the classification of employees, its employees are not fully within the salary schedule accompanying such classification. In nearly every instance maximum salaries are no higher than an amount equal to Step 3 of the Salary Schedule, and therefore starting salaries usually fall below that prescribed by Step 1. The only counterbalance to these deficiencies is the Merit System which allows for the continued and regular recognition of meritorious service.

A consideration of all of the foregoing factors leads us to the conclusion that the Legislature was well aware that the Department's operation is substantially affected by agreements with the Federal Government, and that it recognized the condition of a Merit System in order to qualify for such grants-in-aid.

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Further, in viewing the Classification System broadly as a plan to place all State employees of a same class on an equal basis as far as possible, we are unable to perceive how the continuation of the agreements with the Federal Government will violate this principle with the fact in mind that the Department is already at a comparative disadvantage salary-wise.

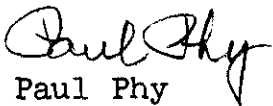
Therefore, in consideration of all of these factors, it is our opinion that the Department's agreement as set forth in the question presented is authorized and that a continuation of the Merit System is authorized.

S U M M A R Y

Agreements between the State Department of Public Welfare and the Federal Government, as regards the Merit System, are authorized so long as beginning salaries do not exceed Step 1 and maximum salaries do not exceed Step 7 of the Salary Classification Schedule.

Very truly yours,

WAGGONER CARR
Attorney General

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PP:mkh

APPROVED:
OPINION COMMITTEE

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